



State of Rhode Island and Providence Plantations  
**DEPARTMENT OF EDUCATION**  
Shepard Building  
255 Westminster Street  
Providence, Rhode Island 02903-3400

Enclosure 6a2  
December 18, 2018

Ken Wagner, Ph.D.  
Commissioner

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**TO:** Members of the Council on Elementary and Secondary Education

**FROM:** Ken Wagner, Ph.D., Commissioner *KW*

**RE:** Approval of the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time

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In compliance with the State requirement that all regulations be re-written, reformatted and codified by December 31, 2018, RIDE has revised the RI Nutrition Requirements 2009, effectively repealing and replacing them with these proposed Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time. Both the repeal and the proposed regulations were promulgated in September 2018 for a 30-day public review and comment period. During the public comment period no objections were received on the repeal of the RI Nutrition Requirements 2009. However, on the proposed regulations, RIDE received a written comment expressing concern that RIDE failed to conduct a cost-analysis of the economic impact of the new proposed regulations on schools and contended that the "whole grain" requirement was a new requirement requiring an increased expenditure of funds by districts and schools. Since the proposed regulation maintains the status quo with respect to State nutrition requirements and limitations on competitive foods, RIDE determined that the proposed regulation does not require "any new expenditure of money or increased expenditure of money by a city, town, or school district."

As a result of that public comment, RIDE re-noticed the proposed Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Food and Beverages; Limitations on Competitive Foods and Beverages at Meal Time, for an additional 30-day public review and comment period, and held another public hearing. RIDE received a total of thirty-five comments during the public review and comment process (please see attached public comment summary report). The majority of the comments favor the proposed regulations, noting that the strong nutrition standards benefit students, especially those most dependent on school meals.

Considering that these state-level nutrition requirements continue to provide significant health and nutrition benefits to students, especially those most dependent on school meals, I urge the Council to adopt the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Food and Beverages; Limitations on Competitive Foods and Beverages at Meal Time, as presented.

**RECOMMENDATION: THAT, the Council on Elementary and Secondary Education adopts the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time, as presented**

## **TITLE 200 – BOARD OF EDUCATION**

### **CHAPTER 20 – COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION**

#### **SUBCHAPTER 25 – STUDENT HEALTH AND SAFETY**

PART 4 – Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time

#### **4.1 Authority**

- A. This part is promulgated pursuant to R.I. Gen. Laws §§ 16-8-9, 16-8-10, 16-8-10.1, 16-21-7(c) and further authorized under 7 C.F.R. §§ 210.11(b) and 210.19(e).
- B. The provisions of this Part will be monitored and enforced by RIDE during the USDA Administrative Review Process set forth in 7 C.F.R. § 210.18.

#### **4.2 Purpose**

The purpose of this Part is to maintain high nutrition standards for school meals that are reimbursed by the United States Department of Agriculture and all other food and beverages that are sold on the school campus in Rhode Island. USDA nutritional standards set minimum requirements and states operating the National School Lunch and School Breakfast Programs are permitted to establish more rigorous nutrition requirements or additional requirements for school meals and competitive foods that are not inconsistent with the provisions of USDA rules. The additional nutritional requirements and additional limitations on sales of competitive foods and beverages set forth in this Part will enhance school meals and the school nutrition environment in Rhode Island's schools.

#### **4.3 Definitions**

- A. For the purposes of these Rules and Regulations, the following terms shall have the following meaning:
  - 1. "Competitive foods" means all foods and beverages, other than meals reimbursed under the National School Lunch Act (42 U.S.C. § 1751 et seq.) and Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.) available for sale to students on the school campus during the school day.
  - 2. "Reimbursable meal" means a meal (breakfast, lunch or afterschool snack) which meets all of USDA's meal requirements for reimbursement

under the National School Lunch Act (42 U.S.C. § 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.).

3. “School campus” means all areas of the property under the jurisdiction of the school that are accessible to students during the school day.
4. “School day” means the period from midnight before, to sixty (60) minutes after, the end of the official school day.

#### **4.4 Incorporated Materials**

These regulations hereby adopt and incorporate 7 C.F.R. §§ 210.10, 210.11, 210.18, 210.19 and 220.8 (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

#### **4.5 State Specific Requirements**

- A. In addition to the minimum meal requirements for all reimbursable meals set forth in federal regulation (lunches and afterschool snacks established in 7 C.F.R. § 210.10 and school breakfasts established in 7 C.F.R. § 220.8) all reimbursable meals must meet the following additional requirements:

1. On a weekly basis, at least one-half (1/2) of the “grain servings” in USDA meals must be one hundred (100%) per cent whole grain and the remaining “grain servings” must be whole grain rich.
2. In all menu-planning options, schools will offer each day, at a minimum, two (2) different fruits and/or vegetables at breakfast; three (3) different fruits and/or vegetables at lunch.
3. No more than one (1) serving of one hundred (100%) percent juice may be offered per day. Juice may be offered at breakfast or at lunch each day, but not at both meals.
4. No more than two (2) servings of one hundred (100%) percent juice may be offered each week as part of an afterschool snack.
5. Artificial sweeteners and sugar alcohols are prohibited.
6. Caffeine, except naturally-occurring trace amounts, is prohibited.

- B. In addition to the minimum requirements for competitive foods and limitations on service of competitive foods established in 7 C.F.R. § 210.11 and R.I. Gen. Laws § 16-21-7, all competitive foods must meet the following additional requirements:

1. Artificial sweeteners and sugar alcohols are prohibited.

2. Added sweeteners are prohibited in beverages. This includes but is not limited to high fructose corn syrup, white sugar, brown sugar, corn syrup, dextrose, raw sugar, malt syrup, fructose sweetener, honey, molasses and fruit juice concentrate. This provision does not apply to flavored non-fat milk or USDA commodities served as part of a reimbursable meal.
3. Caffeine, except naturally-occurring trace amounts, is prohibited.

C In addition to the limitations on service of competitive foods established in 7 C.F.R. § 210.11, competitive foods offered at mealtimes in elementary schools are limited to the following:

1. The entrée that is included in that day's reimbursable meal;
2. The same entrée when served the next school day;
3. Whole or cut fresh fruits;
4. Whole or cut fresh vegetables (may include low-fat dressing or hummus);
5. Yogurt (may be layered with fruit)
6. Water – any size of plain water (with or without carbonation)
7. Fluid Milk – up to eight (8) ounce portions limited to:
  - a. Unflavored low-fat milk (1% fat) or
  - b. Unflavored or flavored fat free milk, or
  - c. Milk alternatives permitted by USDA National School Lunch Program